

CHANGE OF CONTRACT PRICE

11.1 COMPENSATION

The Contract Price constitutes the total compensation payable to CONTRACTOR for performing the Work. All duties, responsibilities, and obligations assigned to or undertaken by CONTRACTOR shall be at his expense without change in the Contract Price.

11.2 CHANGE ORDER

The Contract Price may only be changed by a Change Order. Any claim for an increase in the Contract Price shall be based on written notice delivered to OWNER and ENGINEER within fifteen (15) days of the occurrence of the event giving rise to the claim. Notice of the amount of the claim with supporting data shall be delivered within forty-five (45) days of such occurrence unless ENGINEER, in writing, allows an additional period of time to ascertain accurate cost data. All claims for adjustments in the Contract Price shall be determined by ENGINEER if OWNER and CONTRACTOR cannot otherwise agree on the amount involved. Any change in the Contract Price resulting from any such claim shall be incorporated in a Change Order. No claim for an adjustment in the Contract Price will be valid if not submitted in accordance with this paragraph 11.2.

11.3 VALUE OF WORK

The value of any Work covered by a Change Order or of any claim for an increase or decrease in the Contract Price shall be determined in one of the following ways:

11.3.1 Where the Work involved is covered by unit prices contained in the Contract Documents and the total amount of increase or decrease in quantity of a Bid Item does not vary more than twenty five percent (25%) from the estimated quantity shown in the Bid Proposal for that Bid Item, by application of unit prices to the quantities of the items involved.

11.3.2 By mutual acceptance of a lump sum or unit prices.

11.3.3 On the basis of the Cost of the Work (determined as provided in paragraphs 11.4 and 11.5) plus a CONTRACTOR's Fee for overhead and profit (determined as provided in paragraph 11.6).

11.4 COST OF THE WORK (INCLUSION)

The term Cost of the Work means the sum of all costs necessarily incurred and paid by the CONTRACTOR in the proper performance of the Work. Except as otherwise may be agreed to in writing by OWNER such costs shall be in amounts no higher than those prevailing in the locality of the Project,

shall include only the following items, and shall not include any of the costs itemized in paragraph 11.5:

11.4.1 Payroll costs for employees in the direct employ of CONTRACTOR in the performance of the Work under schedules of job classifications agreed upon by OWNER and CONTRACTOR. Payroll costs for employees not employed full time on the work shall be apportioned on the basis of their time spent on the Work. Payroll costs shall include salaries and wages plus the cost of fringe benefits which shall include social security contributions, unemployment, excise and payroll taxes, workmen's compensation, health and retirement benefits, sick leave, vacation and holiday pay applicable thereto. Such employees shall include superintendents and foremen at the site. The expenses of performing work after regular working hours, on Sunday or legal holidays shall be included in the above to the extent authorized by OWNER.

11.4.2 Cost of all materials and equipment furnished and incorporated in the Work, including costs of transportation and storage thereof, and manufacturers' field services required in connection therewith. All cash discounts shall accrue to CONTRACTOR unless OWNER deposits funds with CONTRACTOR with which to make payments, in which case the cash discounts shall accrue to OWNER. All trade discounts, rebates, and refunds and all returns from sale of surplus materials and equipment shall accrue to OWNER; and CONTRACTOR shall make provisions so that they may be obtained.

11.4.3 Payments made by CONTRACTOR to the subcontractors for work performed by Subcontractors. If required by OWNER, CONTRACTOR shall obtain competitive bids from Subcontractors acceptable to him and shall deliver such bids to OWNER who will then determine, with advice of ENGINEER, which bids will be accepted. If a subcontract provides that the Subcontractor is to be paid on the basis of Cost of the Work Plus a Fee, the Cost of the Work shall be determined in accordance with paragraphs 11.4 and 11.5. All subcontracts shall be subject to the other conditions of the Contract Documents insofar as applicable.

11.4.4 Costs of special consultants (including, but not limited to, engineers, architects, testing laboratories, surveyors, lawyers, and accountants) employed for services specifically related to the Work.

11.4.5 Supplemental costs including the following:

11.4.5.1 The proportion of necessary transportation, traveling, and subsistence expenses of CONTRACTOR's employees incurred

in discharge of duties connected with the Work.

11.4.5.2 Cost, including transportation and maintenance, of all materials, supplies, equipment, machinery, appliances, office and temporary facilities at the site, and hand tools not owned by the workmen, which are consumed in the performance of the Work; and cost less market value of such items used but not consumed which remain the property of CONTRACTOR.

11.4.5.3 Rentals of all construction equipment, machinery and the parts thereof whether rented from the Contractor or other rental agencies will be authorized by the ENGINEER and approved by the OWNER. The rate for rental equipment, machinery and the parts thereof will be computed and paid by the City of Albuquerque based on the following:

11.4.5.3.1 In cases where the piece of equipment to be used, whether specialized or not, is rented or leased from an outside agency and used in the execution of negotiated or force account work, a reasonable rental rate agreed upon in advance by the CONTRACTOR and the ENGINEER may be allowed upon presentation of the rental agency's quotation. To the approved rental rate, the established Hourly Operating Costs as listed in the current Blue Book (Rental Rate Blue Book in effect at the time of equipment use, published by Equipment Guide Book Co., Palo Alto, California) will be added; to this total an additional 15% will be added for administering this item.

11.4.5.3.2 In cases where the piece of equipment to be used, whether specialized or not, to be used is owned by the contractor, the rental rate will be computed as follows:

City of Albuquerque (COA) Equipment
Rental Rate = Blue Book Hourly Rate X
0.50 + Blue Book Hourly Operating Cost.

The rates shown in the Blue Book have been computed from current costs of ownership and operation related to the average number of hours usage per year. The rates shown do not include operating personnel. The ownership cost represents the total cost of depreciation, interest, insurance, taxes, storage, etc., reduced to an hourly rate. Estimated operating cost/hour includes fuel, lubricants, tires and other operating expendables, such as the percentage of mechanic's wages chargeable to preventive and field maintenance. The current Blue Book as modified above by the City of Albuquerque shall apply for any machinery or special equipment (other than small tools), including fuel, lubricants and transportation costs and the use of which has been authorized by the ENGINEER. COA Equipment Rental Rates will be applied in accordance with the following criteria:

A. Manufacturer's identification plates attached to equipment shall be used insofar as possible to determine identification and capacities of the designated items of equipment. Where the equipment is not provided with such plates, the CONTRACTOR will be required to supply written statements certifying the equipment identification and capacity as shown by his equipment inventory. The ENGINEER'S records shall be completed in full to include type, capacity and horsepower for the equipment used in order to properly correlate the equipment with that described in the Rental Rate Blue Book schedule. The listed Blue Book rates are the maximum for equipment of modern design and in good working condition. Equipment shall be so handled and used to provide normal output and production.

B. Most commonplace items of equipment are listed in the Blue Book. In cases where the piece of equipment to be used is not listed in the Blue Book, the rental rate will be established by requesting a rate from Equipment Guide Book Company or by using the Blue Book Rental Rate for a comparable piece of equipment being used, as determined by the ENGINEER. If the equipment used is of such age that it is not listed, then the most comparable machine shown in the Blue Book, as determined by the ENGINEER, will be used.

C. Standard manufactured items identified by unit weight or section dimensions will be measured utilizing nominal weights or dimensions. Unless more stringently controlled by tolerances in cited specifications, manufacturing tolerances established by the industries involved will be accepted.

D. "Move-in" and "move-out" charges required by the piece of equipment not available on the job will be included as part of the extra work at actual transportation cost if the particular piece of equipment is not moved onto the specific job under its own power. "Move-in" and "move-out" charges will be paid once each for any particular piece of equipment except in unusual circumstances which must be justified in writing and authorized by the ENGINEER. "Move-in" and "move-out" charges shall include all costs of loading and unloading.

E. Equipment rental rates for standby time, when authorized in writing by the ENGINEER, will be one-half of the computed COA Equipment Rental Rate less the Hourly Operating Cost. Under no circumstances shall it be assumed that idle equipment will be paid for under these standby provisions until after payment for idle equipment is authorized in writing by the ENGINEER.

F. The regional difference percentage as described in Section 1, paragraph 9, of the Blue Book will not be applicable.

G. Overtime as described in Section One of the current Blue Book will not apply. All equipment used on extra work will be paid for at the regular hourly rate as determined by using the formula for City of Albuquerque Equipment Rental Rate.

11.4.5.4 Sales, use, or similar taxes related to the Work and for which CONTRACTOR is liable, imposed by any governmental authority.

11.4.5.5 Deposits lost for causes other than CONTRACTOR's negligence, royalty payments, and fees for permits and licenses.

11.4.5.6 Losses, damages, and expenses not compensated by insurance or otherwise, sustained by CONTRACTOR in connection with the execution of and to the Work, provided they have resulted from causes other than the negligence of CONTRACTOR, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable. Such losses shall include settlements made with the written consent and approval of OWNER. No such losses, damages, and expenses shall be included in the Cost of the Work for the purpose of determining CONTRACTOR's Fee. If, however, any such loss or damage requires reconstruction and CONTRACTOR is placed in charge thereof, he shall be paid for his services a fee proportionate to that stated in paragraph 11.6.2.

11.4.5.7 The cost of utilities, fuel, and sanitary facilities at the site.

11.4.5.8 Minor expenses such as telegrams, long distance telephone calls, telephone service at the site, expressage and similar petty cash items in connection with the Work.

11.4.5.9 Cost of premiums for bonds and insurance which OWNER is required to pay in accordance with paragraph 5.3.

11.5 COST OF WORK (EXCLUSION)

The term Cost of the Work shall not include any of the following:

11.5.1 Payroll costs and other compensation of CONTRACTOR's officers, executives, principals (of partnership and sole proprietorships), general managers, engineers, architects, estimators, timekeepers, clerks, and other personnel employed by CONTRACTOR whether at the site or in his principal office or a branch office for general administration of the Work and not specifically included in the schedule referred to in paragraph 11.4.1—all of which are to be considered administrative costs covered by the CONTRACTOR's Fee.

11.5.2 Expenses of CONTRACTOR's principal and branch offices other than his office at the site.

11.5.3 Any part of CONTRACTOR's capital

expenses, including interest on CONTRACTOR's capital employed for the Work and charges against CONTRACTOR for delinquent payment.

11.5.4 Cost of premiums for all bonds and for all insurance policies whether or not CONTRACTOR is required by the Contract Documents to purchase and maintain the same (except as otherwise provided in paragraph 11.4.5.9).

11.5.5 Costs due to the negligence of CONTRACTOR, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including but not limited to, the correction of defective work, disposal of materials or equipment wrongly supplied and making good any damage to property.

11.5.6 Other overhead or general expense costs of any kind and the costs of any item not specifically and expressly included in paragraph 11.4.

11.6 CONTRACTOR'S FEE

The CONTRACTOR's Fee which shall be allowed to CONTRACTOR for his overhead and profit shall be determined as follows:

11.6.1 a mutually acceptable fixed fee; or if none can be agreed upon,

11.6.2 A fee based on the following percentages of the various portions of the Cost of the Work:

11.6.2.1 for costs incurred under paragraphs 11.4.1 and 11.4.2, the CONTRACTOR's Fee shall be ten percent (10%),

11.6.2.2 for costs incurred under paragraph 11.4.3, the CONTRACTOR's Fee shall be ten percent (10%); and if a subcontract is on the basis of Cost of the Work Plus a Fee, the maximum allowable to the Subcontractor as a fee for overhead and profit shall be ten percent (10%), and

11.6.2.3 no fee shall be payable on the basis of costs itemized under paragraphs 11.4.4, 11.4.5, and 11.5.

11.7 OVERHEAD AND PROFIT

The amount of credit to be allowed by CONTRACTOR for any change which results in a net increase in cost for the change order OR the amount of credit to be allowed OWNER for any change which results in a net decrease in the cost for such change order shall include the combined overhead and profit of CONTRACTOR, so calculated in this Section 11.

11.8 ITEMIZED COST

11.8 Whenever the cost of any Work is to be determined pursuant to paragraphs 11.4 and 11.5, CONTRACTOR will submit in form prescribed by ENGINEER an itemized cost breakdown together with supporting data.

11.9 CASH ALLOWANCES

11.9.1 It is understood that CONTRACTOR has included in the Contract Price all allowances so named in the Contract Documents and shall cause the Work so covered to be done by such materialmen, suppliers, or Subcontractors and for such sums within the limit of the allowances as ENGINEER may approve.

11.9.2 Upon final payment, the Contract Price shall be adjusted as required and an appropriate Change Order issued. CONTRACTOR agrees that the original Contract Price includes such sums as he deems proper for costs and profit on account of cash allowances. No demand for additional cost or profit in connection therewith will be allowed.

11.10: The CONTRACTOR agrees that, by signing any Change Order, the compensation established in the Change Order shall comprise the total complete compensation due to the CONTRACTOR for the Work and Contract Time defined in the Change Order. The CONTRACTOR agrees that the Change Order is in full accord and satisfaction of all disputed compensation amounts and Contract time including but not limited to compensation amounts and Contract Time for interruption of schedules, extended home or other office overhead, all other overhead, profit, and delay and impact claims or ripple effect, attributable to those matters included within the Change Order, and that CONTRACTOR'S execution of the Change Order is a waiver of any reservation of claim for additional compensation, increase in Contract Price and Contract Time with respect to the Change Order.